



Appeal Decision

Hearing held on 27 July 2006

Site visit made on 27 July 2006

by **Frances Mahoney** DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for
Communities and Local Government

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Appeal Ref: APP/J1535/A/06/2008145/NWF

118 High Road, Chigwell, Essex IG7 5AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr L C Earl against the decision of Epping Forest District Council.
- The application Ref EPF/424/05 dated 8 March 2005 was refused by notice dated 1 August 2005.
- The development proposed is the demolition of a single dwelling and the construction of 10 apartments, including improved access and underground parking.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The Council has dealt with the outline application on the basis that all matters of detail have been reserved for later determination. The submitted drawings, showing possible floor plans, siting, layout and a front elevation of the proposed building, are therefore purely illustrative but do indicate how the proposed development could be accommodated on the site. I shall therefore have regard to them on this basis in determining the appeal. The only formal application plan is drawing number JTS/5636/01.
 2. In my view the planning application, the subject of this appeal, was quite legitimately dealt with as an outline application. Any permission would have been subject to a condition specifying reserved matters for the Councils subsequent approval. The Council had the opportunity to require the submission of all or any of the reserved matters if they were of the opinion that, in the circumstances of the case, the application ought not to be considered separately from them. In this instance the Council considered the application to be valid and appropriately submitted in outline form. I would concur with this view taking into account the physical attributes of the site and its locality, the areas planning policy designation, the quality of the surrounding development taking into account the setting of the listed buildings in the vicinity, and the appeal site's spatial relationship with the neighbouring development. I am therefore satisfied that this appeal comes out of a valid planning application and that it is entirely right and proper for me to consider the proposal on that basis.
 3. The appeal site was the subject of an earlier planning application (EPF/1616/97) which was for the demolition of the existing development and replacement by flatted development. The series of illustrative plans which accompanied the application showed the development to involve 16 flats with underground parking. Planning permission was refused and the subsequent appeal (T/APP/J1535/A/98/295069/P7) was dismissed. Although there are similarities between the current proposal and the permitted scheme there are noticeable
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differences. I have therefore considered whether these differences are sufficient to warrant a different decision in this case.

Main Issue

4. I consider the main issue in this case is the effect of the proposed development on the character and appearance of the area.

Planning Policy

5. The development plan for the area includes the *Essex & Southend-on-Sea Replacement Structure Plan* (SP) adopted April 2001 and the *Epping Forest District Adopted local Plan* (LP) adopted January 1998. Since the decision on this proposal was made alterations to the LP within the *Local Plan Alterations Redeposit* (RLP) dated July 2005, were adopted on 10th July 2006 and should be used alongside the LP.
6. A number of policies have been brought to my attention but, I find the following to be of most relevance in this case. SP Policy BE1 sets out that, existing built-up areas will be used in the most efficient way to accommodate new development. However, if new development in urban areas is considered to be an unsympathetic change, it would not be permitted. LP Policy DBE1 requires new buildings to respect their setting whilst being of a size and position such that they adopt significance in the street scene. LP Policy LL10 expects development proposals to make adequate provision for the retention of trees which are considered to be of significance or potential amenity value. LP Policy DBE9 identifies the need to design new development so that potential adverse effects on neighbouring properties are minimised.
7. The relevant policies in the RLP follow the general thrust of those within the LP and have the effect of updating their terms. However, a greater emphasis is placed on promoting sustainable development within the policy framework, particularly in respect of the re-use of previously developed land as well as accessibility to sustainable means of transport.
8. The thrust of the relevant development plan policy follows that of Government guidance contained in Planning Policy Statement 1: *Delivering Sustainable Development*, Planning Policy Guidance Note 3: *Housing*, and Planning Policy Guidance Note 13: *Transport*. The Government's overall aim is the delivery of sustainable development. Planning should promote the more efficient use of land through higher densities and the use of suitably located previously used developed land and buildings. Planning should reduce the need to travel, making the fullest use of public transport and focus developments in existing centres and near to major public transport interchanges.

Reasons

9. The appeal site lies on the edge of an established residential area and a commercial centre. High Road is characterised by large detached, individually designed properties, of varying height and scale. Some stand on sizable plots and substantial mature trees, particularly on the eastern side of High Road, give the area a green and leafy appearance. The house adjoining the appeal site to the south, No 120, is barely visible from the road due to a bank of tall dense frontage trees. Behind the properties on the eastern side of High Road are the greens and fairways of the Chigwell Golf Course.

10. Adjoining the appeal site to the north is an estate agents office with a garden centre beyond, and Chigwell Station, part of the Central Tube line, past that. The railway itself is set down in a deep, well vegetated cutting. Once over the railway bridge and past the Station, a more mixed form of development prevails. This includes the shops and businesses which make up the Chigwell commercial centre. A number of blocks of flats are included in this area.
11. The appeal site accommodates a single property with garage, which stands well back from the main road. No 118, or Charlesworth as it is also known, has the appearance of a chalet bungalow from the front, but a 2 storey house to the rear. The property is particularly imposing due to its elongated appearance. A combination of the house itself, the linking walls and the adjacent garage affords the property the appearance of some grandeur taking up a significant amount of the width of the plot.
12. The appeal site includes a number of large mature trees around its boundaries which have a significant visual impact in the street scene, both from High Road and from the Golf Course. A considerable number of these trees are covered by Tree Preservation Order TPO/EPF/35/04 (TPO).
13. The appeal site is sandwiched between the commercial nature of the Chigwell centre with its flatted developments, and the residential character of the High Road. It seems to me that whilst the site does have a strong visual relationship with the established residential development to the south nonetheless the commercial, mixed development to the north has some influence.
14. The appeal proposal is in outline form with the actual details of the design not yet known. However, the description of development specifies the proposal as being for 10 apartments with underground parking. Whilst the plans before me are illustrative only, they do show one option for accommodating such a development on the site. The frontage of the building would be slightly further forward on the plot than that existing. The width of the building would be comparable to that of the existing property and garage. The siting of the proposed flats is shown as being more central to the plot. At the level of accommodation proposed the floor area would be greater than that existing. However, the illustrative front elevation shows a building of some consequence, reminiscent of a large individually designed house from a bygone era. Whilst such a design would be of a greater scale and massing than that existing, it would nonetheless, in my view, sit comfortably on the plot. The illustrative plans are based on a development of 10 two bedroom flats. In seeking to provide wider housing opportunity and choice to create a mixed and balanced community, the blend of proposed apartment types may change.
15. I do not therefore consider that an appropriately designed development of flats would be out of the character with the area which surrounds the appeal site. In assessing the suitability of the appeal site to accommodate a building of sufficient size to accommodate a flatted development of 10 apartments, I am conscious that the domestic scale of the development to the west and south should be respected. The overall depth of the appeal site; the potential for a generous set back of the property; the sweeping nature of the front driveway; the amount of frontage and boundary trees and landscaping on site, as well as along High Road; and the location of the site so close to Chigwell Station and the Chigwell centre, are all factors which I have taken into account. I consider it would be possible to design a building using traditional proportions, materials and detailing, so that it would blend easily with its setting.

16. The appeal proposal considered by the previous Inspector was for a development of 16 flats. He concluded that a building designed to accommodate such a number of units would be likely to be far too bulky for it to be read as a single dwelling thereby eroding the existing domestic character and appearance of the area. The appeal proposal before me concerns a smaller scheme in terms of the number of units and width of the proposed development. The Inspector, in considering the earlier scheme, would have exercised his judgement on the evidence in relation to that particular case. I must similarly use my judgement in respect of the evidence before me.
17. If the appeal proposal were to be constructed along the lines of the illustrative plans, the majority of the boundary trees, including those covered by the TPO, would be at some distance from the new building. However, the development would necessitate the removal of the Willow marked as T18 on the TPO, in order to accommodate the building. This tree is visible from the High Road, but is seen against a backdrop of the belt of boundary trees and shrubs along the east and southern boundaries. I consider that replacement planting could be incorporated into a landscaping scheme to compensate for the loss of the Willow tree. The Ash tree, T5 of the TPO, seems to straddle the northern boundary of the site. The area beneath its canopy is proposed for parking. It presently accommodates a garage and shed. Using appropriate means of demolition and then sympathetic methods of hard surfacing construction, it seems to me, it would be possible to utilise the area for parking without unacceptable harm coming to the Ash tree or the neighbouring trees. Similarly the construction of the improved access, driveway and underground parking area could be carried out in such a way so as not to compromise the well-being of the trees. Such details of construction and protection could be agreed by means of a condition.
18. It has also been suggested that the future residents of the flats may find the trees around the site boundaries overbearing and overshadowing particularly those along the southern boundary. This could result in pressure to cut back or remove some of the planting. However, I consider that the degree of separation which could be achieved between the proposed apartment building and the boundary trees, along with an appropriately designed scheme taking into account the level of existing planting, would not unacceptably prejudice the well-being of the trees whether covered by the TPO or not.
19. I have also considered the argument that the current proposal would set a precedent for similar development in the area. Whilst each application and appeal must be treated on its individual merits, I can appreciate the concern that approval of this proposal could be used in support of similar schemes on similar large sites in the area. However, the location of the appeal site on the edge of the predominately residential area and so close to commercial property and Chigwell Station, I consider, are factors which would work to set the appeal proposal apart from other similar future developments.
20. In this way I am lead to the view that, subject to an appropriate, high quality design taking into account the character of the locality, the appeal site could be developed as proposed in an acceptable manner resulting in a highly sustainable form of development, which blends with its setting. The terms of SP Policy BE1, LP Policies DBE1 and LL10, along with Government guidance, would not be compromised in this instance.

Other Matters

Listed buildings

21. There are a number of listed buildings in the vicinity of the appeal site. These properties are interspersed between more modern, less distinguished, development. The appeal site lies on the opposite side of High Road from the nearest listed building, No 189. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that special regard shall be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. Other listed buildings along High Road were pointed out to me at the appeal site visit. From my observations I am satisfied that a development of the size proposed similarly located to the existing house on the site would not harm the setting or historic nature of the listed buildings close by. Therefore the relevant sections would not be compromised in this instance.

Living Conditions

22. Concern has been expressed in relation to the effect on the living conditions of the residents of the neighbouring property at Key West, adjoining the appeal site to the south, in terms of a loss of privacy, particularly to their first floor bathroom and patio areas. Having had the opportunity of viewing from the grounds of Key West, I am of the opinion that the development would not necessarily give rise to unacceptable levels of overlooking. The proposed apartment building could be designed in such away as to avoid the need to locate windows at first floor level of a size and style which would result in any direct intrusion into the privacy of the neighbours. The intervening belt of mature trees and shrubs along the southern boundary would further safeguard the amenities of the neighbours. I do however recognise in the winter months, when leaf cover would be diminished, or if significant trimming was carried out to the trees and shrubs, the existing planting would not be so effective at screening the development from the south. Nonetheless I do not consider this objection alone would be such as to warrant refusal of planning permission.

Flooding

23. National policy regarding the issue of flooding and how it might be managed or mitigated is set out in *Planning Policy Guidance Note 25 Development and Flood Risk* (PPG 25). Its aim is to reduce the risks to people and the developed and natural environment from flooding. Only the anecdotal evidence of residents is before me to substantiate a claim that the appeal proposal would cause or exacerbate flooding problems particularly on the western side of High Road. A fluctuating water table, the lie of the land, inadequacies in the highway drainage system and the flow of water from the humped back bridge are all factors suggested to influence the flow and pooling of water in heavy rain. I do not consider that the impact of the appeal proposal on the drainage of the area would be of such significance as should warrant with-holding permission on this ground alone. A condition requiring the submission of a flood risk assessment along with its implementation, as suggested by the Council's Assistant Land Drainage Engineer, would appropriately address this matter.

Highways

24. Some concern was expressed regarding the effect of the proposal on the busy Chigwell High Road. It seems to me that the fluctuating traffic flows through out the day are not uncommon in urban areas. I have noted that the Director of Highways and Transportation raised no objection to the proposal subject to conditions, and whilst traffic conditions may not be ideal, I do not consider the position to be so disadvantageous as to warrant a refusal of planning permission on highway grounds.
25. The Director of Highways and Transportation suggests that provision should be made for a new pavement across the site frontage. At my site visit I saw that there was an existing footpath which was perfectly serviceable and linked in with a similar footpath off to the south. The informality of the footpath construction and its natural appearance, I consider, is appropriate in an area where a green leafy character predominates. From my observations and the anecdotal evidence of residents the path is well used and I am not persuaded there would be any great benefit in upgrading it.
26. Circular 05/2005 *Planning Obligations* indicates that, amongst other things, where planning obligations are sought they must be relevant, necessary, directly related to the development and fairly and reasonably related in scale and kind. No detailed evidence as to how the Council have addressed the required tests in justifying, or calculating the requirement for a contribution towards local infrastructure improvements has been submitted to me. I am not convinced, therefore, that such a planning obligation for this development is necessary or reasonable. Consequently I do not consider that this is a matter upon which this appeal should turn.

Conclusion

27. For the reasons given above and having regard to all other matters raised, I conclude that the appeal proposal would not unacceptably harm the character and appearance of the surrounding area.

Conditions

28. I have considered the conditions suggested by the Council in accordance with the guidance given in Circular 11/95 *The Use of Conditions in Planning Permissions*. Of the conditions for which the Council have provided a suggested wording, I have amended them where necessary to follow this guidance. In addition to the standard conditions attached to outline planning permissions relating to the submission and approval of reserved matters, and the commencement of development, the Council wish to see both the preserved and other trees safeguarded on the appeal site. I consider the submission and agreement of such safeguards necessary in the interests of the character and appearance of the locality. As the development is of a size where it is necessary to avoid generating any additional flood risk the imposition of a condition requiring a flood risk assessment would seem appropriate. The Council has proposed a condition relating to the types and colours of external materials and the number of parking spaces required. However I consider this would be adequately dealt with within the terms of the standard outline conditions particularly, in the latter case, taking into account the sustainable nature of the appeal site's location.

Formal Decision

29. I allow the appeal, and grant planning permission for the demolition of a single dwelling and the construction of 10 apartments, including improved access and underground parking at 118 High Road, Chigwell, Essex IG7 5AR in accordance with the terms of the application, Ref EPF/424/05 dated 8 March 2005, and the plans submitted with it, subject to the following conditions:
- 1) Approval of the details of the siting, design and external appearance of the building, the means of access thereto and the hard and soft landscaping of the site, (hereinafter called "the reserved matters"), shall be obtained from the local planning authority in writing before any development is commenced.
 - 2) Plans and particulars of the reserved matters referred to in condition 1 above, relating to the siting, design and external appearance of any buildings to be erected, the means of access to the site and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.
 - 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
 - 4) The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
 - 5) The proposed hard landscaping scheme shall include finished ground and floor levels, including detailed sections and levels relating to the underground parking area, means of enclosure, vehicle and pedestrian circulation areas, hard surfacing materials, refuse or other storage units, signs and lighting, routes of proposed and existing functional services above and below ground. Details of soft landscape works shall include an arboricultural method statement which indicates those trees, shrubs and hedges which are to remain, their species, sizes and positions, along with their heights, stem diameter and crown spread. The location, species and size of all new planting shall be shown and the timetable for their planting. Details of the measures to be taken to ensure the good health and successful establishment of the new planting shall be included. Within 12 months of the date when any of the apartments hereby permitted is first occupied, the landscaping scheme as approved shall be completed. If, within a period of 5 years from the date of planting, any tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the local planning authority gives its written consent to any variation.
 - 6) All the trees to be retained as identified within the arboricultural method statement and any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

- 7) Before the development hereby permitted commences at the site, details of any proposed excavations and methods of construction in relation to development to be carried out within the crown spread of any of the trees on the land or adjacent to it shall be submitted to and approved in writing by the local planning authority. The required details shall include the position and extent of the excavations and works of construction. All of the agreed works of excavation shall be hand dug without the use of any mechanical assistance. Development shall be carried out in accordance with the approved details.
- 8) The burning of any material shall not take place within 15 metres of any preserved tree if the fire is against the wind and not within 25 metres of any preserved tree if the fire is with the wind. Any tree destroyed or seriously damaged by burning shall be replaced during the next available planting season to the satisfaction of the local planning authority.
- 9) A flood risk assessment shall be submitted to and approved by the local planning authority prior to commencement of development. The assessment shall include calculations of increased run-off and associated volume of storm detention using Windes or other similar programme. The approved measures shall be undertaken prior to the first occupation of the building hereby approved and shall be adequately maintained.

Frances Mahoney

INSPECTOR